UNITED NATIONS

General Assembly

FORTY-SEVENTH SESSION

Official Records

SIXTH COMMITTEE
7th meeting
held on
Monday, 28 September 1992
at 3 p.m.
New York

SUMMARY RECORD OF THE 7th MEETING

Chairman: Mr. ZARIF (Islamic Republic of Iran)

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A/C.6/47/SR.7
6 October 1992
ENGLISH
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The meeting was called to order at 3.15 p.m.

AGENDA ITEM 125: OBSERVER STATUS OF NATIONAL LIBERATION MOVEMENTS RECOGNIZED BY THE ORGANIZATION OF AFRICAN UNITY AND/OR BY THE LEAGUE OF ARAB STATES (A/47/323)

1. Mr. FLEISCHHAUER (Under-Secretary-General, The Legal Counsel), introducing the report of the Secretary-General on agenda item 125 (A/47/323), entitled "Observer status of national liberation movements recognized by the Organization of African Unity and/or by the League of Arab States", said that the introduction to the report reproduced part of General Assembly resolution 45/37, of 28 November 1990, in which the Secretary-General was requested to report to the General Assembly at its forty-seventh session on the implementation of the resolution, and in which all States that had not done so were urged to consider as soon as possible the question of ratifying, or acceding to, the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character; the resolution had also called once more upon the States concerned to accord to the delegations of the national liberation movements in question, which were accorded observer status by international organizations, the facilities, privileges and immunities necessary for the performance of their functions, in accordance with the provisions of the Vienna Convention. Section II of the report contained replies received from Governments in accordance with General Assembly resolution 45/37. He hoped that the Sixth Committee would find the report useful during its consideration of agenda item 125.

AGENDA ITEM 128: UNITED NATIONS DECADE OF INTERNATIONAL LAW (A/47/384)

2. Mr. FLEISCHHAUER (Under-Secretary-General, The Legal Counsel), introducing the report of the Secretary-General on agenda item 128 (A/47/384), entitled "United Nations Decade of International Law", said that section II of the report contained an analysis of the replies received from States and international organizations on the implementation of the Programme for the first part of the Decade (1990-1992). The replies were analytically summarized in section II and were grouped under the five main sections into which the Programme was divided. Section III of the report contained supplementary information on the new activities of the United Nations relevant to the progressive development of international law and its codification.

3. Recent events had demonstrated once again how essential it was that the rule of law prevail and the timeliness of the General Assembly's decision to proclaim the United Nations Decade of International Law. In that connection, it should be noted that one of the main purposes of the Decade was the promotion of means and methods for the peaceful settlement of disputes, including resort to and full respect for the International Court of Justice. Moreover, the Secretary-General, in his report entitled "An agenda for peace", had recommended, as had his predecessor, that "the Secretary-General [should] be authorized, pursuant to Article 96, paragraph 2, of the Charter, to take advantage of the advisory competence of the Court and that other United

(Mr. Fleischhauer)

Nations organs that already [enjoyed] such authorization [should] turn to the Court more frequently for advisory opinions". It would be recalled that the Committee had discussed the idea during the forty-fifth and forty-sixth sessions of the General Assembly. In that same report the Secretary-General had further recommended that all Member States should accept the general jurisdiction of the Court, without any reservation, before the end of the United Nations Decade of International Law. The Secretary-General had added that, in "instances where domestic structures prevented [that], States should agree bilaterally or multilaterally to a comprehensive list of matters they [were] willing to submit to the Court and should withdraw their reservations to its jurisdiction in the dispute settlement clauses of multilateral treaties". The Secretary-General had also recommended that, when "submission of a dispute to the full Court [was] not practical, the Chambers jurisdiction should be used" and that "States should support the Trust Fund established to assist countries unable to afford the cost involved in bringing a dispute to the Court, and such countries should take full advantage of the Fund in order to resolve their disputes". He was certain that the Secretary-General's recommendations would be a useful contribution to the debate on agenda item 128, in the Working Group and in the plenary meetings of the Sixth Committee.

AGENDA ITEM 130: CONVENTION ON JURISDICTIONAL IMMUNITIES OF STATES AND THEIR PROPERTY (A/47/326 and Add.1 and 2)

4. Mr. FLEISCHHAUER (Under-Secretary-General, The Legal Counsel), introducing the report of the Secretary-General on agenda item 130 (A/47/326 and Add.1 and 2), entitled "Convention on jurisdictional immunities of States and their property", said that in its resolution 46/55, the General Assembly, after noting that the International Law Commission had completed at its forty-third session the second reading of the draft articles on jurisdictional immunities of States and their property, had decided to establish at its forty-seventh session an open-ended working group of the Sixth Committee to examine, in the light of the written comments of Governments, as well as the views expressed in debates at the forty-sixth session of the Assembly: (i) issues of substance arising out of the draft articles, in order to facilitate a successful conclusion of a convention through the promotion of general agreement; and (ii) the question of the convening of an international conference, to be held in 1994 or subsequently, to conclude a convention on jurisdictional immunities of States and their property.

5. Section I of the report set out the relevant paragraphs of General Assembly resolution 46/55 inviting States to submit their comments and observations on the draft articles and requesting the Secretary-General to circulate those comments and observations at the forty-seventh session of the General Assembly. Section II contained the replies of 15 States received as of 18 September 1992. He hoped that the report would enable the Sixth Committee to take appropriate decisions on the questions raised under agenda item 130.

The meeting rose at 3.35 p.m.

UNITED NATIONS

General Assembly

FORTY-SEVENTH SESSION

Official Records

SIXTH COMMITTEE
8th meeting
held on
Thursday, 1 October 1992
at 10 a.m.
New York

SUMMARY RECORD OF THE 8th MEETING

Chairman: Mr. ZARIF (Islamic Republic of Iran)

later: Mrs. FLORES (Uruguay)

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AGENDA ITEM 136: PROTECTION OF THE ENVIRONMENT IN TIMES OF ARMED CONFLICT

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Distr. GENERAL
A/C.6/47/SR.8
12 October 1992
ENGLISH
ORIGINAL: FRENCH

The meeting was called to order at 10.20 a.m.

AGENDA ITEM 136: PROTECTION OF THE ENVIRONMENT IN TIMES OF ARMED CONFLICT (A/47/328, A/C.6/47/3, A/C.6/47/L.2)

1. The CHAIRMAN said that Croatia had joined the sponsors of the draft resolution on the protection of the environment in times of armed conflict (A/C.6/47/L.2).

2. Mr. FLEISCHHAUER (Under-Secretary-General, The Legal Counsel), introducing the report of the Secretary-General entitled "Protection of the environment in times of armed conflict" (A/47/328), said that the observer for the International Committee of the Red Cross (ICRC) would provide the Sixth Committee with further information and clarification, including the conclusions of ICRC as to the impact on the issue under consideration of the United Nations Conference on Environment and Development and the Second Review Conference of the Parties to the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques of 1976.

3. Mr. SANDOZ (Observer for the International Committee of the Red Cross) said that the resurgence of interest in the issue of protection of the environment in times of armed conflict was attributable to a new awareness of the broader problems of the environment and to the sight of the particularly serious damage inflicted on the environment in recent conflicts.

4. ICRC had been studying that question since the 1970s in the context of work that had led, for the first time in international humanitarian law, to the introduction of provisions expressly protecting the environment. Acting on the mandate it had received from the international community "to work for the understanding and dissemination of international humanitarian law applicable in armed conflicts and to prepare any development thereof" (art. 5, para. 2 g of the Statutes of the International Red Cross and Red Crescent Movement), a mandate which had been confirmed by the General Assembly in its decision 46/417, by the United Nations Conference on Environment and Development and, just recently, by the Second Review Conference of the Parties to the ENMOD Convention of 1976, ICRC had undertaken a general review of the problem. To conduct the review, it had assembled a group consisting of military experts and experts on the environment, environmental law and international humanitarian law.

5. Although the number and complexity of the issues identified had made it impossible to deal with them comprehensively, ICRC thought that a number of points could already be made. First, before even thinking about strengthening international humanitarian law, the international community must recognize that all wars inflicted damage on the environment even if the rules of war were respected.

6. Second, while strict adherence to international humanitarian law would undeniably reduce such damage, efforts to enforce the law could not replace efforts to prevent armed conflicts.

7. Third, the real problem was not so much that the norms were inadequate but rather that people were ignorant of, or disregarded them. International humanitarian law was not limited to provisions dealing expressly with the natural environment. The prohibition of attacks likely to cause "widespread, long-term and severe" damage to the environment had certainly given it a new dimension. The interest at stake was not just long-term interests of each of the Parties involved but the fate of the entire planet - the common heritage of mankind. The experts had stressed the importance in that respect of certain principles: only military targets might be the object of attacks; collateral damage must be reduced as much as possible and a military target must not be attacked if the foreseeable collateral damage was disproportionate to the expected military advantage.

8. Fourth, clarification was required regarding the applicability of the norms in question. Specifically, it was necessary to determine which norms were binding only on the parties to the instrument involved; which were part of customary law or in the course of becoming so; which were subject to the famed Martens clause, whereby civilians and combatants remained under the protection and authority of the principles of international law derived from established customs, from the principles of humanity and from the dictates of public conscience; and whether, in an internal conflict, a State could commit, against its own people and on its own territory, acts that were prohibited in an international conflict.

9. Fifth, the recognition that it was not the norms themselves which were at fault but the way they were implemented, should not be used as a pretext for inaction. Considerable effort was needed to increase awareness of international humanitarian law. If they were to be truly applied the norms must be deeply rooted - must become as natural a reflex as the handling of a gun. In that light, the plans for drawing up military instructions dealing with the respect of the environment seemed a particularly useful, practical measure.

10. ICRC had applied itself assiduously to the task assigned to it; it expected to reach conclusions and to formulate specific proposals in 1993. Far from seeing its report as an end in itself, ICRC considered it a basis for enabling the international community as a whole to strengthen the protection of the environment in times of armed conflict.

11. Mr. ABU ODEH (Jordan) said that, in proposing the inclusion in the agenda of the forty-sixth session of the General Assembly of an item entitled "Exploitation of the environment as a weapon in times of armed conflict and the taking of practical measures to prevent such exploitation", his delegation had not intended to revive old quarrels in the Sixth Committee, or to rewrite

(Mr. Abu Odeh, Jordan)

history. The Jordanian initiative was indicative of two basic truths, namely, that the preservation of humanity necessitated the existence of legislation for environmental protection, as well as the support of nations for international efforts to safeguard human rights and world peace in the aftermath of the human suffering caused by war. The sole purpose was to derive the right lessons from experience so as to set the appropriate targets for the future, and to contribute to ensuring a safer world for all by preventing damage to the environment.

12. He thanked ICRC for its report on the subject, and pointed out that his delegation agreed that at that early stage, there was a need to focus on the elaboration and implementation of existing laws. Initiating a new process of codification of rules could be counterproductive. To open a debate in the Sixth Committee before taking note of the ICRC's findings, including the work of the twenty-sixth International Conference of the Red Cross and Red Crescent, would be a waste of effort.

13. In the interest of promoting compromise, his delegation had submitted draft resolution A/C.6/47/L.2, along with the delegations of Cyprus, Lebanon, Morocco, the United States of America and Yemen. The draft resolution urged States to comply with the existing international law applicable to the protection of the environment in times of armed conflict, to sign the relevant international conventions, and to incorporate the relevant provisions into their military manuals. His delegation had also submitted, along with the United States delegation, a compendium (A/C.6/47/3) of provisions of existing international law that provided protection for the environment during armed conflicts, to be used as an aid in the consideration of the item.

14. Mr. HORMAZABAL (Chile) pointed out that protection of the environment in times of armed conflict was far from being a purely abstract notion or a new concern for specialists; rather, it was a question which needed to be addressed because the means devised by man to overcome natural obstacles were being put to improper use, the most recent example being the oil spills in the Persian Gulf.

15. History had shown that man had not always heeded the voice of reason. None the less judging, for example, from the terms of the Declaration of St. Petersburg of 1868, which provided that the only legitimate object which States should endeavour to accomplish during war was to weaken the military forces of the enemy, the 1982 World Charter for Nature, the 1907 Hague Convention respecting the Laws and Customs of War on Land, the Geneva Conventions of 1949 and the additional Protocols thereto, and the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, the international community had sought to learn from its bitter experiences and to find legal solutions to the various phenomena related to armed conflict, including the degradation of the environment.

(Mr. Hormazabal, Chile)

16. Most specialists considered that there was no need to draw up a new set of international rules on the subject. Indeed, the protection of the environment in times of armed conflict was based on express rules, on fundamental principles of humanitarian law, on the rules of international environmental law and on certain provisions relating to international responsibility. While there were still some gaps that needed to be filled, the real need was to enhance the effectiveness of the existing provisions. Chile, for its part, had signed the Hague Convention of 1907, and was a party to the Geneva Conventions of 1949. Furthermore, pursuant to the provisions of General Assembly resolution 45/38, of 28 November 1990, his Government had deposited, on 24 April 1991, the instruments of ratification of the additional Protocols to the Geneva Conventions of 1949, along with a declaration stating that it recognized the competence of the International Fact-Finding Commission provided for in article 90 of Additional Protocol I. His delegation wished to take the opportunity to urge States that had not yet done so to sign those instruments as soon as possible. His Government trusted that there would soon be more than 30 declarations of acceptance of the competence of the Fact-Finding Commission. The 1976 Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, was currently being considered by the Chilean Senate, and Chile would probably accede to it very soon.

17. Chile was also a party to other international agreements aimed at safeguarding human life and the environment. After mentioning some examples, he said that his Government attached special importance to the Antarctic Treaty of 1959, which his Government had ratified in 1961; part of that region was under Chilean sovereignty. Finally, Chile, as well as Argentina, Brazil and Mexico, had taken measures to implement the Treaty of Tlatelolco of 1967; Chile had ratified the Treaty in 1974. All those international treaties enjoyed constitutional status under Chilean domestic law, and thus had been assimilated into the provisions of the fundamental law of the country.

18. The time had come for all countries to redouble their efforts on behalf of peace as a means of safeguarding the environment and its principal beneficiary, mankind. It was indeed possible to mobilize resources to put an end to injustice, eliminate poverty and safeguard the environment; the only requirement was that everyone should put their heart and mind to it.

19. Mr. STRAUSS (Canada) welcomed the inclusion in the agenda of the question of the protection of the environment in time of armed conflict, which remained timely. Noting the conclusion in September 1992 of the Second Review Conference of the Parties to the Convention on the Prohibition of Military and Any Other Hostile Use of Environmental Modification Techniques, he announced that Canada was giving thought to making a request for the convening of a consultative committee of experts to clarify the scope and application of its provisions.

(Mr. Strauss, Canada)

20. His delegation welcomed the ongoing work of the International Committee of the Red Cross (ICRC) in that field. In 1991, the ICRC had participated in an international meeting of experts in Ottowa which had concluded that the customary laws of war, in reflecting the dictates of public conscience, included a requirement to avoid unnecessary damage to the environment, a principle drawn from Marten's clause, found in the preamble to the Hague Conventions of 1899 and 1907, which provided that inhabitants and belligerants remain under the protection and rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity and the dictates of the public conscience. An important evolution was thus taking place which reflected the importance of the ecological point of view and which should be brought to bear on other questions, such as that of proportionality (the need to strike a balance between the protection of the environment and the needs of war) or that of the distinction between military and non-military objectives. Under the same principle, the environment as such should not be the object of direct attack, and his delegation would like to see that point reflected in the resolution to be adopted after discussion of the item.

21. Canada considered the question of the applicability of the rule of international environmental law in times of armed conflict one of the areas calling for further examination. In that respect it shared the view of the ICRC Meeting of Experts in Geneva in April 1992, which had also called for increased clarification and dissemination of international law on the subject. The paper circulated by the United States and Jordan (A/C.6/47/3) was a valuable contribution in that respect and the rules and principles it contained should be kept under review. His delegation also supported the retention of the item on the agenda for the forty-eighth session of the General Assembly.

22. Although further clarification and dissemination were important elements in ensuring the effective protection of the environment during armed conflict, nothing could substitute for the scrupulous observance of those rules and the adherence of the greatest possible number of countries to the existing international humanitarian law instruments.

23. Mr. MARTINEZ GONDRA (Argentina) deplored the fact that the environment had been used for military purposes in several recent international armed conflicts and that damaging consequences had resulted not only for the environment but for human beings. The belligerents engaged in an armed conflict, whether international or non-international, should always bear in mind that the protection of the environment affected the well-being of humanity as a whole. They should therefore use those means which were least apt to cause damage to the environment, damage for which they would be responsible. Just as the closing years of the nineteenth century had marked the beginning of the codification of the law of war, it was to be hoped that the last decade of the twentieth century would witness the establishment of an effective system of protection of the environment in time of armed conflict.

(Mr. Martinez Gondra, Argentina)

24. While the question of the protection of the environment in peacetime had attracted the attention of the international community from the end of the Second World War, concern for the environment in time of armed conflict was much more recent, as it had not been expressed in either the Hague regulations of 1907, the Geneva Conventions of 1949 or the 1972 Stockholm Conference on the Environment. With respect to Additional Protocol I of 1977, the fact that it could be interpreted in many ways weakened many of its provisions.

25. His delegation welcomed the change now taking place and the increasing interest in the protection of the environment in time of armed conflict, as was shown, for example, by principle 24 of the Rio Declaration on Environment and Development, or the conclusions of the Second Review Conference of the Parties to the Convention on the Prohibition of Environmental Modification Techniques of 1976, which was held in September 1992. It also welcomed the expressed intention of the Red Cross to continue its effort to widen existing law, to convene other meetings of experts to examine specific unresolved matters and to work out a series of guidelines on which military manuals could be based.

26. To raise the question of the application of existing law was to express the wish that the largest possible number of States become parties to the treaties in force. The possibility should also be considered of establishing a control mechanism for cases of serious violations such as the International Fact-Finding Commission provided for by Additional Protocol I or the Advisory Committee of Experts provided for by the 1976 Convention on the Prohibition of Environmental Modification Techniques. Machinery of that kind existed for human rights and played a very useful role.

27. His delegation hoped that the work of clarifying the existing rules would continue in order to establish their applicability in time of armed conflict. Although the Red Cross and other bodies could play a useful part, it was the opinion of Governments that should provide the necessary guidance.

28. Mr. RYDBERG (Sweden), speaking on behalf of the five Nordic countries, said that the Gulf conflict, by revealing the extent of the environmental damage which a modern war could cause, had brought the issue of the protection of the environment in times of armed conflict to the fore and had prompted reconsideration of existing legal rules.

29. While everyone seemed to agree that legal rules to protect the environment did exist and that the environment would undoubtedly be better protected if those rules were better known and more widely implemented, legal experts nevertheless seemed divided, some being satisfied with the existing framework, and others stressing its obscurities and insufficiencies.

30. The Nordic countries welcomed the timely inclusion of the item entitled "Protection of the environment in times of armed conflict" in the agenda of the forty-seventh session of the General Assembly in view of the principles,

(Mr. Rydberg, Sweden)

particularly principle 24, contained in the Rio Declaration adopted by the United Nations Conference on Environment and Development in 1992.

31. The international community had long been concerned about environmental degradation in times of war, as could be seen from the ancient prohibition on the burning of croplands and the poisoning of wells. A principle stated in the Hague Regulations of 1907 - that the choice of means of injuring the enemy was not limitless - was not irrelevant to the protection of the environment. More specifically, that same concern had been expressed at the United Nations Conference on the Environment (Stockholm, 1972) and, by generating a concerted effort, it had given birth in 1976 to the ENMOD Convention. The Second Review Conference of the Parties to that Convention had been held in September 1992 and, since the Convention's scope gave rise to differing interpretations, several States Parties had proposed the establishment of a clarification mechanism in the form of a consultative committee of experts. The Nordic countries supported that proposal.

32. During the negotiation of Additional Protocol I of 1977 to the Geneva Conventions of 1949 several problems of interpretation had emerged, in particular with regard to article 35, paragraph 3, which stated that "It is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment". The vagueness of the expression "widespread, long-term and severe damage", used again later in article 55, still gave rise to differing interpretations, which diminished the scope of the provision. There were other provisions of Additional Protocol I designed to safeguard the environment in armed conflicts, but many of them were also vague.

33. Existing law on the topic rested on two pillars: humanitarian law and environmental law. It was not clear to what extent existing rules and accepted principles in those two branches of international law covered the same activities, but other areas of international law must also be taken into account, for example the law of the sea, in situations where the environment affected was part of the global commons. The two branches of international law in question were not alien to each other, for many principles of humanitarian law had a corresponding rule in environmental law. For example, the rule stated in article 91 of Additional Protocol I, according to which violators of the Geneva Conventions or the Protocol were liable to pay compensation, could be compared with the "polluter pays" principle.

34. Lastly, the Nordic countries were pleased to see the question of the protection of the environment in times of armed conflict receive the whole attention of the international community and they hoped for a more detailed examination which would make it possible to remedy the vagueness and imprecision of many existing provisions of humanitarian law and to establish the extent to which the rules of international environmental law were applicable in times of armed conflict. Environmental protection would have everything to gain therefrom.

35. Mrs. Flores (Uruguay), Vice-Chairman, took the Chair.

36. Mr. CEDE (Austria) said that the urgency and universality of the item under consideration had been recognized immediately upon its inclusion in the agenda at the request of Jordan: the burning oil fields in the Persian Gulf spoke for themselves. The legal profession, and in particular experts in international law, had suddenly realized that the protection of the environment in times of armed conflict required more than just a fresh look: international law contained remarkable lacunae, there were few instruments, and the rules were scattered about among the Hague Regulations of 1907, the four Geneva Conventions of 1949 and the Additional Protocols of 1977. The universally accepted norms of customary law were few in number and indeed very general in nature. There was therefore an undeniable need to identify and develop a regime for protection of the environment in times of armed conflict.

37. The present legal regime had a number of shortcomings, of which at least five came immediately to mind: under present law damage inflicted on ecosystems in times of armed conflict must be avoided only when it might cause harm to human health; the principle of proportionality between the military necessity of an action and its possible detrimental effects on the environment was usually applied in favour of military necessity; the concept of "collateral damage" was a means of justifying environmental disasters which seemed to be accepted just like the devastations of a hurricane; article 35, paragraph 1, of Additional Protocol I and the 1976 ENMOD Convention prohibited acts which might cause "widespread, long-lasting and severe damage to the natural environment", implying that less serious damage was authorized; lastly, there was no effective sanction against serious violations of the existing rules. Such violations might be defined as "international crimes against the environment": the draft articles of the International Law Commission concerning State responsibility did indeed place massive pollution of the air and of the seas in the category of international crimes.

38. Austria had seized the opportunities offered by international conferences to address questions of environmental protection during armed struggles and it had made several concrete proposals on the topic. At the United Nations Conference on Environment and Development and at the Second Review Conference of the Parties to the ENMOD Convention, held in Geneva in September 1992, it had proposed further limitations on what still appeared to be an insufficiently restrictive regime.

39. The General Assembly should continue its work on that important matter and keep it on the agenda of its future sessions. While it seemed that the Sixth Committee should be the main forum for the debate, other bodies too might well work on the subject, within the limits of their activities and competence, such as the United Nations Environment Programme or the International Committee of the Red Cross. But it was for the Sixth Committee to take up the challenge, which was nothing less than the improvement and expansion of the norms of international law governing the protection of the environment in times of armed conflict.

40. Mr. MOHAMMED (Nigeria) said that armed conflicts still occurred, notwithstanding serious efforts to outlaw or prevent them. The report of the Secretary-General under consideration confirmed that it was not the lack of rules of international law that was the problem, but the unwillingness of States parties to a conflict to observe them. The Geneva Conventions of 1949, the Protocols additional thereto, and the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques of 1976 would appear to provide adequate safeguards.

41. Nigeria had ratified the Geneva Conventions, the Protocol additional thereto and the Convention of 1976 because it was conscious of the fact that methods of warfare were not unlimited. The natural resources of the planet, which were indispensable to human survival, must also be preserved. Nigeria, therefore, called upon the international community to make every effort to protect the environment both during times of armed conflict and in peacetime. It welcomed the Secretary-General's report and commended the efforts of ICRC in that field.

42. Mr. Zarif (Islamic Republic of Iran) resumed the Chair.

43. Mr. WOOD (United Kingdom of Great Britain and Northern Ireland), speaking on behalf of the European Community and its member States, recalled that, at the previous session of the General Assembly, the Community had raised several questions which were still pertinent. It had, for example, suggested that, in approaching the item under consideration, what was needed was a review of existing international humanitarian law and it had looked forward to examining the results of the work of ICRC. The Twenty-sixth International Conference of the Red Cross and Red Crescent, which was to have taken place in Budapest in late 1991, had been postponed and had not yet been held. Taking into account that unfortunate development, the General Assembly had requested the Secretary-General to report to it on activities undertaken in the framework of the International Red Cross. The report of the Secretary-General thus set out in detail the information received from the International Committee of the Red Cross and contained a valuable survey of existing law in the field.

44. The report began by stating two fundamental rules: first, that the right of parties to an armed conflict to choose methods or means of warfare was not unlimited; second, that the concept of proportionality must be respected. The report next reviewed the relevant provisions of the Hague Regulations of 1907 and the Geneva Convention of 1949, including the additional Protocol I, as well as other international instruments bearing directly on the protection of the environment in times of armed conflict. In addition it dealt with the question of the implementation of those texts.

45. The European Community wished to draw particular attention to the section of the report entitled "The question of implementation". First, article 146 of the fourth Geneva Convention placed each party under the obligation to search for persons alleged to have committed, or to have ordered to be committed, grave breaches of its provisions and to bring such persons to

(Mr. Wood, United Kingdom)

justice regardless of their nationality. Consideration would be given, under another agenda item, to the possible establishment of an international criminal court with jurisdiction, inter alia, in respect of war crimes. Moreover, it should be noted that the International Fact-Finding Commission under Additional Protocol I had become operational.

46. The second aspect of implementation which the Community wished to emphasize was the obligation of States Parties to spread knowledge of the law. In that connection, it was essential that military manuals should state clearly the obligations of members of the armed forces in respect of the environment. The report before the Committee should assist Governments in preparing the relevant passages of such manuals.

47. The Secretary-General also discussed the principal activities in recent years. It would be noted from paragraph 40 that, at the various meetings held in the aftermath of the Gulf conflict, generally speaking, the idea of creating an entirely new body of international rules for the protection of the environment had been ruled out. Most experts had insisted on the importance of existing law, while acknowledging that there were a number of gaps in the rules currently applicable. Those gaps were listed in paragraph 43 of the report. The experts had further emphasized the need for States to become parties to existing treaties, to observe their existing obligations and to enact the necessary domestic legislation. It should be noted that Principle 24 of the Rio Declaration also required States to protect the environment in times of armed conflict.

48. The European Community and its member States had welcomed the convening by ICRC in April 1992 of a meeting of experts to study the question. In view of its membership, that multi-disciplinary group was entitled to considerable respect. Some of its conclusions were set out in paragraphs 53 to 60 of the report and it should be noted that the experts had encouraged ICRC to carry on its work to clarify and, where necessary, develop the rules to protect the natural environment in times of armed conflict (para. 60).

49. The subsequent paragraphs of the report showed that ICRC had been able to adopt a balanced approach and that it had reservations about proposals to undertake a new process of codification. Rather, it emphasized the need to make "a particular effort to increase compliance with existing rules and to improve their implementation" (para. 62).

50. In conclusion, the States members of the European Community hoped that the General Assembly would keep the question of the protection of the environment in times of armed conflict on its agenda for future sessions.

The meeting rose at 12.05 p.m.

UNITED NATIONS

General Assembly

FORTY-SEVENTH SESSION

Official Records

SIXTH COMMITTEE
9th meeting
held on
Tuesday, 6 October 1992
at 10 a.m.
New York

SUMMARY RECORD OF THE 9th MEETING

Chairman:	Mr. ZARIF	(Islamic Republic of Iran)
later:	Mr. TOMKA (Vice-Chairman)	(Czechoslovakia)
later:	Mr. ZARIF (Chairman	(Islamic Republic of Iran)

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AGENDA ITEM 136: PROTECTION OF THE ENVIRONMENT IN TIMES OF ARMED CONFLICT (continued)

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The meeting was called to order at 10.10 a.m.

AGENDA ITEM 131: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS TWENTY-FIFTH SESSION (continued) (A/47/454)

1. The CHAIRMAN said that he had held extensive consultations in recent days with the officers of the Committee and with Committee members concerning the proposal that he send a letter to the Chairman of the Fifth Committee, suggesting that the Fifth Committee consider the question of granting travel assistance to least developed and other developing countries which were members of the United Nations Commission on International Trade Law, and take a substantive decision on it.

2. He then read out the text of a letter which had been agreed upon as a result of those consultations.

3. He took it that the Committee authorized him to send the letter which he had just read out to the Chairman of the Fifth Committee, with the understanding that the Sixth Committee would not conclude its consideration of the agenda item until it had been informed of the Fifth Committee's decision.

4. It was so decided.

5. The CHAIRMAN said that the letter to the Chairman of the Fifth Committee* would be circulated as a document.

AGENDA ITEM 136: PROTECTION OF THE ENVIRONMENT IN TIMES OF ARMED CONFLICT (continued) (A/47/328; A/C.6/47/3, A/C.6/47/L.2)

6. The CHAIRMAN said that Bangladesh, Benin and the Republic of Korea had joined the list of sponsors of draft resolution A/C.6/47/L.2. Consultations were continuing between the sponsors and those delegations which had expressed concerns about the draft resolution.

7. Mr. NEUHAUS (Australia) expressed appreciation for the report of the Secretary-General (A/47/328), and drew attention to paragraph 66 of the report, which stressed the need for realistic and effective solutions to the problems of protecting the environment in times of armed conflict.

8. A number of speakers had already noted that much remained to be done. The representative of Canada had referred to the recently concluded Second Review Conference of the parties to the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (ENMOD Convention), over which Australia had presided. Canada had raised the

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* Subsequently circulated as document A/C.6/47/4.

(Mr. Neuhaus, Australia)

possibility of the convening of a consultative committee of experts to clarify the scope and application of the provisions of the Convention, a suggestion which his delegation supported.

9. The representative of Sweden, speaking on behalf of the Nordic countries, had said that those countries would be in favour of a further examination of existing international rules for the protection of the environment in times of armed conflict, with a view to clarifying the legal framework, and had welcomed the readiness of the International Committee of the Red Cross (ICRC) to contribute to that effort with the help of leading experts in the field. That idea should be followed up, as ICRC and its group of experts had made significant progress over the past year, even though the plans for the convening of an ICRC conference at Budapest had not materialized.

10. The debate in the Committee had so far proceeded in a remarkably non-politicized manner, owing to the recognition by all countries of the fundamental importance of the issue. He expressed appreciation for the list of existing instruments contained in document A/C.6/47/3. With regard to draft resolution A/C.6/47/L.2, his delegation believed that ICRC was the appropriate body to undertake further work on the question. Consultations were being held with the sponsors of the draft resolution, and he looked forward to the presentation to the Committee of a consensus text.

11. Mr. FOWLER (New Zealand) urged all States to give priority to the full and effective implementation of the existing law on the protection of the environment in times of armed conflict. Since the previous session, the issue had been discussed in a number of international forums. First, in April 1992, at a meeting of experts convened by ICRC, attention had been drawn to the need to enhance dissemination of the existing law and to clarify aspects of its application. His delegation noted with satisfaction that another meeting of experts would be convened in January 1993. Secondly, in June 1992, the United Nations Conference on Environment and Development had adopted Agenda 21, which stated, in paragraph 39.6 (a), that measures in accordance with international law should be considered to address, in times of armed conflict, large-scale destruction of the environment. Lastly, the Second Review Conference of the parties to the ENMOD Convention had been held in September 1992; his delegation urged the parties to give careful consideration to the question of the convening of a consultative committee of experts under article V of the Convention.

12. Mr. CALERO RODRIGUES (Brazil) said that a principle of customary international law which, in general terms, protected the environment in times of armed conflict had been recognized implicitly in paragraph 39.6 (a) of Agenda 21, adopted by the United Nations Conference on Environment and Development.

13. The question rose as to whether the obligation to protect the environment was affected by the involvement of the State concerned in an armed conflict;

(Mr. Calero Rodrigues, Brazil)

conditions might be such that, on the one hand, the State would be materially prevented from fulfilling its existing obligations, while, on the other hand, it might become liable to new and more specific obligations. Provisions governing such cases were embodied in a number of instruments of humanitarian law (A/C.6/47/3). Some of those instruments had not achieved the widest acceptance, and some of the rules which they contained would be more effective if they were clarified and given a uniform interpretation. That, rather than the codification of new rules, should be given priority.

14. It was becoming increasingly clear that the weak point of international law was the difficulty, if not the impossibility, of ensuring its implementation. With regard to the item under discussion, it would be advisable to explore ways of strengthening the existing implementation mechanisms and of creating, where feasible, new and more efficient ones. His delegation suggested that ICRC should include that question in its future programme of work, or, if it was unable to do so, that the General Assembly should entrust the task to one of its subsidiary organs or set up an ad hoc body for that purpose.

15. With regard to draft resolution A/C.6/47/L.2, his delegation found it difficult to accept the omission of any reference to ICRC, which had played such an important role. Furthermore, while the three operative paragraphs of the draft resolution were unobjectionable, they all constituted recommendations for internal action by States. No reference had been made to possible international action to strengthen the existing law, to clarify its provisions or to enhance its implementation.

16. Mr. SHESTAKOV (Russian Federation) said that the environmental disaster resulting from the Gulf war, whose long-term consequences were as yet difficult to forecast, had highlighted the fact that premeditated and indiscriminate destruction of the environment in times of armed conflict constituted not merely an evil but a crime, particularly since the effects of such destruction could spread far beyond the geographical focus of the conflict itself: such acts were clearly violations of the norms of international law and could not be justified even as reprisals.

17. For that reason, a concerted effort on the part of the international community to prevent and eliminate conflicts - an approach which so far had often proved belated or inadequate - was essential. Without belittling the importance of existing machinery for conflict prevention, new mechanisms of international legal settlement should be developed, as the need arose, in order to exclude the possibility of exploiting the environment as a means of warfare, and also to encourage the settlement of ecological disputes arising from armed conflicts.

18. While the primary aim must be to prevent the emergence of situations which might have unforeseeable environmental consequences, it was vital, if armed conflict did occur, to protect the victims of such conflict by

(Mr. Shestakov, Russian Federation)

regulating the means by which war was waged. At the same time, the number and variety of conflicts led to problems in overcoming the gaps in international humanitarian law and in defining the scope of the existing norms. By way of example, at the previous session his delegation had drawn attention to the lack of a unified interpretation by Member States of the scope of the ENMOD Convention. It must be recognized, however, that that the Convention, like other instruments, must be seen in the historical, political, military and economic context of its time, and the development of the norms of international humanitarian law and their application must be recognized as an ongoing process.

19. Much remained to be done in that regard. In particular, not all States had so far become parties to such important instruments as the Protocols Additional to the Geneva Conventions of 1949. Even if they had not yet done so, it was essential that their behaviour conform to the spirit of contemporary international humanitarian law. Russia continued to be a party to the additional Protocols, and advocated their universal acceptance. The ratification of those instruments by the member States of the Commonwealth of Independent States and by other countries could only contribute to the stabilization of international relations. Similarly, States should be encouraged to make the declaration provided for in article 90 of Protocol I concerning the International Fact-Finding Commission.

20. In conclusion, he welcomed the significant contribution made by ICRC in the study of the problem of protecting the environment in times of armed conflict, and in particular the conclusions reached by the meeting of experts convened by ICRC at Geneva from 27 to 29 April 1992, which were outlined in the Secretary-General's report (A/47/328).

21. Mr. AHMED (Iraq) said that agenda item 136 was of particular interest to his delegation in view of the enormous long-term environmental damage done to his country by the use of advanced military technology against it. The extent of the disaster had been described in the reports of various missions (S/22328, S/22366 and S/22799). Moreover, the continued embargo against Iraq which was preventing the import of spare parts to repair damaged facilities, had led to an accumulation of garbage and untreated sewage in city streets, severe pollution of rivers, the degradation of agricultural land and a serious deterioration in the health of the population.

22. Such arbitrary use of weapons of mass destruction made a review of existing law ever more urgent. His delegation, which paid tribute to the efforts of ICRC in that regard, believed that existing instruments of international humanitarian and environmental law covered most aspects of the issue. It remained necessary, however, to ensure strict compliance with such instruments, while avoiding narrow political interpretations or the application of double standards.

23. Mr. NOBILO (Croatia) said that the item under consideration was of particular concern to his delegation because Croatia had recently experienced the impact of war on its own environment. In that context, it welcomed the substantial information provided by ICRC, which was all the more important in that, as a respected international humanitarian organization, ICRC had access to all armed conflicts.

24. Although there was a sufficient number of international legal instruments dealing with the protection of the environment in times of armed conflict, it was not enough that Governments accepted the rules provided in those instruments: military staff, who were directly involved in armed conflicts, must be acquainted with them. That was one of the reasons why his delegation had joined the list of sponsors of the draft resolution submitted by the delegations of Jordan and the United States on the item under consideration (A/C.6/47/L.2), which in paragraph 3 urged States to take steps to incorporate the provisions of international law applicable to the protection of the environment into their military manuals and to ensure that they were effectively disseminated.

25. The devastation inflicted by war in the territory of Croatia had taken the form of damage, some of it permanent or long-term, to the land, watercourses, flora, fauna and topographical features. Since some of the game preserves, forest parks and gardens were located in the areas affected by the war, it was impossible fully to ascertain the situation. Nature reserves in Croatia were also seriously endangered because of the departure of the scientists and experts responsible for their upkeep, and because long-term restoration of the sites would require additional financial resources and aid.

26. Attention should also be drawn to ecological terrorism, such as the destruction of industrial facilities and power plants, such as the Sisak refinery, where numerous fires had occurred, in addition to oil-spills into the Sava river. Letters had been sent to international organizations such as the United Nations Environment Programme and the United Nations Educational, Scientific and Cultural Organization acquainting them with that dimension of the war against Croatia.

27. In conclusion, he said that, while it was unlikely that it would prove possible to prevent or halt armed conflicts in the future, everything possible should be done to diminish the severity of their consequences. It was for that reason that his delegation was supporting the draft resolution on the item.

28. Mrs. FLORES (Uruguay) said that, during the debate on the item at the forty-sixth session, her delegation had emphasized the importance of prevention, the necessity of creating mechanisms to monitor situations in which there were reasonable expectations that the environment would be exploited as a weapon and the desirability of establishing a jurisdiction to consider disputes relating to the environment. The question of prevention could be approached from several points of view; account must be taken of the

(Mrs. Flores, Uruguay)

potential threat which nuclear arms and other weapons of mass destruction represented and of the fact that even disarmament measures could severely contaminate the environment. The concept of prevention also included actions to protect the environment both before and after the outbreak of an armed conflict. In that context, it would be worthwhile to discuss the possibility of establishing early-warning systems to operate in case of damage to the environment in times of armed conflict. Another preventive measure would be a prohibition on the development, production, sale or use of weapons which had a directly harmful impact on the environment.

29. One question which had arisen recently, in the light of developments during the Gulf crisis, was whether or not existing international law fully ensured the protection of the environment in times of armed conflict. In her delegation's view the damage which had occurred in that situation was not the result of deficiencies in the law, but of the failure to implement it. Accordingly, the solution would be to esablish mechanisms for ensuring compliance with the rules and a sanctions regime to be applied if they were violated.

30. There were, however, deficiencies in the existing treaty law, in particular, which could be overcome through the elaboration of supplementary provisions. For example, the ENMOD Convention which prohibited military or any other hostile use of environmental modification techniques having widespread, long-lasting or severe effects, failed to specify what such effects might be. Similar observations could be made with regard to Additional Protocol I to the Geneva Conventions of 1949.

31. A recent contribution to the question had been made in the Rio Declaration adopted at the United Nations Conference on Environment and Development. Principle 24 of the Declaration stated that warfare was inherently destructive of sustainable development and that States should therefore respect international law providing for the environment in times of armed conflict.

32. Her delegation supported the proposal that the existing norms on the subject should be compiled with a view to the preparation of a future framework convention, as well as the suggestion made by several delegations that the rules on environmental protection should be included in military manuals. Such a manual, if universally accepted and periodically updated, would be of immense value.

33. Mr. LIAO Jingcheng (China) said that the question of protecting the environment in times of armed conflict had become an urgent challenge facing the international community, particularly in the light of the increasing destructiveness of the instruments of warfare - a challenge that had been taken up in a number of recent forums organized by the United Nations and ICRC. For its part, his Government was taking an active part in international cooperation concerning the study and codification of rules of international law in that field.

(Mr. Liao Jingcheng, China)

34. From a political, legal and technical point of view, the protection of the environment in times of armed conflict was a complex issue, firstly because the very survival of mankind depended on the environment, and secondly because the advancement of modern science and technology, while greatly enhancing the deterrent power and precision of the means of warfare, had undoubtedly also increased its impact in terms of casualties and environmental damage. Thirdly, although the international principles and rules in that field largely derived from customary international law, and some relevant provisions could be found in international treaties, the precise scope of customary law and the rules provided under the relevant international treaties had yet to be clearly defined. His delegation accordingly believed that the current task should be the strengthening and coordination of the study and codification of the existing laws and treaties, a task best entrusted to ICRC.

35. Mr. MOTSYK (Ukraine) said that the recent conflict in the Gulf, in which Iraq had deliberately released large quantities of oil into the sea and set fire to numerous well-heads, had provided a clear illustration of the hostile use of environmental modification techniques in contravention of international law. The conflict had thus raised serious issues regarding the legal basis for preventing the use of such techniques in periods of conflict.

36. Contemporary international law already contained a whole series of rules governing armed conflict, as could be seen from the memorandum submitted by the Permanent Missions of Jordan and the United States (A/C.6/47/3, annex). However, there was a clear need to enhance the effectiveness of those norms, a goal which could only be achieved if States which had not yet done so acceded to the relevant international conventions and strictly complied with their provisions. Efforts should also be made to eliminate the gaps and shortcomings in the existing international law, some of which had been pointed out by the Austrian delegation at the previous meeting.

37. Conflicts under way in various regions were liable to result in environmental disaster for the populations affected, in particular through the threat to destroy dams and production facilities. The question of hostile environmental modification was thus of great urgency.

38. In conclusion, he said that tribute should be paid to the important work being carried out by ICRC in disseminating information about international humanitarian law, and in particular the rules governing protection of the environment in times of armed conflict. The Sixth Committee should be regarded as the most appropriate forum in which to consider the legal aspects of that problem.

39. Mr. CHATURVEDI (India) said that the question of the international law, and especially the law of war, applicable to the protection of the environment during armed conflict, had arisen in relatively recent times, although the conduct of war, including the methods and means of warfare, had been legally regulated under international humanitarian law ever since the 1868 Declaration

(Mr. Chaturvedi, India)

of St. Petersburg. It was not until the advent of Additional Protocol I to the Geneva Conventions in 1977 that the question of the environment in times of armed conflict had been dealt with directly. Whereas article 35 of the Protocol set out the general rules applicable to acts of warfare, article 55 was intended to protect the civilian population from the effects of warfare on the environment. The Protocol thus prohibited two kinds of activities, namely attacks on the environment as such, and the use of the environment as an instrument of warfare. It prohibited only such damage as was "widespread, long-term and severe", but not other damage to the environment. Nor did it clarify what constituted "widespread, long-term and severe" damage.

40. Among other modern international legal instruments, the ENMOD Convention was of particular relevance, but had the disadvantage of failing to elucidate the criterion for assessing the nature of damage or to provide for a mechanism for the investigation and settlement of any disputes. Similarly, it did not provide for the submission of environmental data to States parties at the initial stages of a crisis. Some of those issues had arisen in the course of the Second Review Conference of the Parties to the ENMOD Convention, held at Geneva from 14 to 21 September 1992.

41. India had played an active role in the successful conclusion of Additional Protocols I and II to the 1949 Geneva Conventions, and in the successful outcome of the Earth Summit held at Rio de Janeiro. His country was a party to most of the relevant conventions, including the ENMOD Convention, and the question of accession to Additional Protocol I was under consideration.

42. His delegation would have no objection if the Sixth Committee were to discuss the legal aspects of the topic, with a view to promoting and developing the applicable regime. ICRC could be fully involved in that exercise. Lastly, the results of the Second Review Conference should be analysed by the Secretariat in time for the next session of the General Assembly.

43. Mr. YENGEJEH (Islamic Republic of Iran) commended ICRC for its work during the past two years to help determine whether existing international law offered an adequate response to environmental disasters. Citing paragraphs 40 and 61 of the Secretary-General's report (A/47/328), he emphasized that the real problem relating to the protection of the environment in time of war was not the inadequacy of existing norms, but rather the ignorance of or lack of will to implement, existing obligations under international law. His delegation agreed that every effort should be made to ensure the full implementation of existing relevant rules and norms, and that it was important to increase awareness of and clarify ambiguous points in the relevant laws in order to promote their implementation. His delegation looked forward to concrete proposals on the subject from ICRC and other interested parties and believed that the handbook of model guidelines for military manuals which ICRC planned to prepare was a timely initiative.

44. Mrs. KOUPTCHINA (Belarus) said that the disaster at the Chernobyl nuclear power plant had made Belarus particularly aware of the value and fragility of the environment, and also of the need for coordinated action at the international level to prevent damage to the environment, and to eliminate the consequences of such damage. Belarus supported the notion of the global interest of the international community as a whole in the protection of the environment.

45. While recognizing the need to strengthen existing norms of international humanitarian and environmental protection law and also to improve their implementation, her delegation believed that emphasis should be placed on the interpretation and development of those norms. Existing international law established only limited restrictions on the use of the environment for military purposes because there were imprecise formulations which allowed the possibility of various interpretations. There was also a significant problem posed by the sphere of operation of the international legal norms; in particular it was not clear to what extent they were applicable during times of armed conflict.

46. It was difficult to work out a mechanism for the implementation of international legal norms which contained vague terms, and principles which were general in nature. Her delegation therefore welcomed the willingness of ICRC to contribute to the process of clarifying and interpreting existing norms with the help of the most competent experts in that sphere.

47. The observance and implementation of existing norms of international law on the protection of the environment, and educational work in that area were very important. Belarus supported the appeal to States to incorporate the provisions of international law applicable to the protection of the environment into their military manuals and to ensure that they were effectively disseminated. As one of the 29 States which had made the declaration provided for in article 90 of Additional Protocol I to the Geneva Conventions of 1949, Belarus urged all States which had not yet done so to recognize the competence of the International Fact-Finding Commission as soon as possible.

48. Her delegation supported the proposal to keep the item on the agenda of subsequent sessions of the General Assembly, and, in the Sixth Committee, to consider the problems of the development and improvement of the relevant international legal norms and principles.

49. Mr. ROSENSTOCK (United States of America) said that the horror of the senseless assaults on the environment perpetrated during the Gulf conflict had generated a sense of urgency to review the adequacy of applicable laws to protect the environment. A meeting of experts convened by ICRC had confirmed that existing laws of war fully proscribed the conduct during the conflict which had had such a serious impact on the environment.

(Mr. Rosenstock, United States)

50. It was necessary to guard against unintentionally weakening existing international law by implying that it had to be strengthened through the elaboration of new law, when the real need was to ensure that existing law was fully understood and applied. International law prohibiting wanton and intentional destruction of the environment was well developed. The memorandum submitted by his delegation and that of Jordan (A/C.6/47/3, annex) identified specific provisions of international law which provided protection for the environment during armed conflict - and thus outlawed the environmental horrors wrought during the Gulf conflict - and set out principles of international law which provided additional protection for the environment to States parties in times of armed conflict.

51. One delegation had purported to give five reasons why new law was needed, but an examination of those reasons showed that they were based, inter alia, on an excessively narrow reading of existing law. It was untrue, for example, that damage to the environment was prohibited only when it caused harm to human health. Existing treaty law under the Hague and Geneva regimes prohibited the destruction of property. It was also untrue that new law was necessary because the principle of proportionality was applied in favour of military necessity. The coalition forces in the Gulf conflict, desiring to spare the historic temples at Ur, had not bombed them even though MiG aircraft had been stationed there.

52. Another speaker had asserted at the current meeting that prohibited weapons had been used in the Gulf conflict. However, except perhaps for the Scud missiles fired at States not engaged in the hostilities - attacks for which there had been no military justification and which had constituted a flagrant violation of the rule of law - no prohibited weapons had been used.

53. Statements to the effect that damage which was not long-lasting or severe was not covered because of the focus of the ENMOD Convention denigrated the law that flowed from the Hague Convention respecting the Laws and Customs of War on Land and the Hague Regulations and the 1949 Geneva Conventions. The fact that "environment" was not the term used in those instruments did not mean that environmental damage was not covered. Statements about how grave breaches were treated were not about lacunae in the law but, rather about compliance with existing law. The Security Council was likely to adopt a resolution soon dealing directly with grave breaches. His delegation strongly supported the application of existing law. However, references to highly controversial portions of the incomplete drafts of the International Law Commission on State responsibility were not particularly relevant to the matter under discussion.

54. It was important to maintain a careful balance between prohibitions on certain means and methods of warfare, on the one hand, and the legitimate right of self-defence, on the other hand, in order to ensure the effectiveness of laws in that area. New provisions created unnecessarily in response to recent events would risk disrupting that balance, resulting in rules that

(Mr. Rosenstock, United States)

constrained Governments in attaining legitimate military objectives. Any such rules, however laudable the intent of those who drafted them, were bound to be disregarded in wartime, thereby undermining all international law, including, in particular, international humanitarian law.

55. It was to be hoped that the fundamental changes occurring throughout the world had reduced the likelihood that nations would continue to resort to arms to resolve disputes. Nevertheless, in time of war some collateral damage to the environment and collateral damage to civilian objects and collateral injury and death to civilians were inevitable. It was also true that outlaw regimes would violate new international law just as they had violated existing law. The General Assembly therefore should encourage the dissemination of and compliance with existing provisions of the law of war, for universal application of those laws would have a positive impact on environmental protection.

56. Draft resolution A/C.6/47/L.2 concentrated on constructive measures to that end, and the ideas put forward by ICRC, including its offer to develop model guidelines for military manuals, were of particular merit. The draft resolution and the memorandum in the annex to document A/C.6/47/3 had helped to focus the discussion in the Committee, and he believed that, in the light of the statement by the representative of Brazil, it should be possible to negotiate a basis for a resolution that could be adopted by consensus.

57. Mr. YAHYA BABA (Malaysia) welcomed the active participation of States and international organizations in the deliberations on means to prevent environmental damage in times of armed conflict. He shared the concern of other delegations about the defects in and inadequacies of existing legal instruments in that regard. Regrettably, many relevant instruments were not universally understood, accepted and complied with. Frequent airing of the issue in various forums would create broader awareness, a prerequisite for increased international acceptance. The proposed model guidelines for military manuals would provide useful guidance. As was clearly indicated in the reports of the Secretary-General and ICRC, many ambiguities in the existing norms must be cleared up, for at times they were used by certain parties to justify unacceptable actions.

58. Damage to the environment also occurred in peacetime as a result of various activities, including the production and testing of nuclear weapons, military training and exercises, the estabishment of military bases and installations and the maintenance of combat-readiness. Even with the best of intentions, accidents occurred, as demonstrated by the recent incident in which five Turkish armed forces personnel had been killed in a military exercise. Precautionary measures must be taken to prevent such incidents. While his delegation welcomed agreements to limit nuclear testing, it hoped that the parties concerned would commit themselves to an immediate and complete ban on all types of nuclear testing. The end of the cold war provided an impetus to arms control and disarmament, and it was imperative to

(Mr. Yahya Baba, Malaysia)

limit, if not totally eliminate, harm to the environment caused by the destruction of weapons and other military equipment.

59. His delegation was equally concerned that the improper storage and transportation of weapons of mass destruction could cause severe damage to the environment. His country, along with other States bordering the Strait of Malacca, had often expressed deep apprehension regarding the possibility of accidents in the Strait involving ships carrying deadly substances. The increasing number of accidents involving oil-tankers in the Strait provided a timely reminder that the international community must address the issue in order to work out a system to prevent such occurrences.

60. The agenda item under discussion was limited in scope and should be broadened to include military activities both in times of armed conflict and in peacetime. His delegation looked forward to participating in the ongoing discussions on the item.

61. Mr. Tomka (Czechoslovakia), Vice-Chairman, took the Chair.

62. Mr. JAREŠ (Czechoslovakia) commended ICRC for its efforts to provide assistance and protection to the victims of armed conflict and its work on the development and codification of international humanitarian law. He pledged his delegation's support for its work on the protection of the environment in times of armed conflict.

63. Starting with the Geneva Conventions of 1949, international humanitarian law had evolved over the decades, and it was now widely acknowledged that States had the obligation to prevent armed conflict as such by resolving international disputes by peaceful means. Accordingly, with rare exceptions, an outbreak of an armed conflict unequivocally indicated that at least one belligerent had failed to respect that basic obligation, and such an outbreak in fact constituted an act of aggression.

64. The experience of recent conflicts and the discussion the preceding week of the item on the status of the Protocols Additional to the Geneva Conventions of 1949 showed clearly that those who violated the basic rules of international law and the Charter displayed the same disregard for the rules of international humanitarian law. Such belligerents also failed to take environmental concerns into account. The case of non-international armed conflict was even more complex.

65. It was therefore imperative to increase understanding of and ensure compliance with existing international law applicable to the protection of the environment in times of armed conflict. Prosecution of war criminals would be a valuable deterrent. The International Law Commission could appropriately reflect concerns regarding the item under consideration when evaluating the observations of States concerning the draft articles of the draft code of crimes against the peace and security of mankind and when discussing the various aspects of an international criminal jurisdiction.

(Mr. Jareš, Czechoslovakia)

66. His country was a party to all the relevant international instruments listed in the memorandum annexed to document A/C.6/47/3 and believed that States which had not yet done so should be encouraged to become party to the relevant international conventions applicable to the protection of the environment during armed conflicts. Intensive discussion of the issue in the Sixth Committee, ICRC and other forums should result in specific suggestions as to how to fill existing gaps in the legal regime relating to the protection of the environment in times of armed conflict and how effectively to address the problem of implementation.

67. Mr. YAMAMOTO (Japan) said that the protection of the global environment was one of the most serious challenges facing the international community. Japan therefore welcomed the increasing recognition and understanding of existing international law pertaining to the environment in times of armed conflict. His delegation noted with satisfaction the work of ICRC on the issue during the past year, as well as other meetings convened to discuss whether existing law offered an adequate response to environmental disasters, including the Conference on a Fifth Geneva Convention. The United Nations Conference on Environment and Development, in which his delegation had actively participated, had underscored the need for measures in accordance with international law to address large-scale destruction of the environment in times of armed conflict.

68. The Secretary-General's report (A/47/328), which presented a comprehensive explanation of the existing law pertaining to environmental protection in times of armed conflict, and the memorandum submitted by the delegations of Jordan and the United States (A/C.6/47/3), were helpful contributions to the discussion of the question. Existing international law contained certain provisions not originally aimed at environmental protection as such, but which nevertheless were applicable to environmental protection in times of armed conflict. It was therefore important to facilitate a common understanding among States of existing law and to clarify the interpretation of relevant international law through, for example, expert meetings of ICRC. His delegation hoped that ICRC would continue its consultations with experts to delve further into such matters as the relationship between international humanitarian law and international environmental law, and that it would set up a programme of further activities in that field. While States should of course strive to prevent armed conflict in the first place, they should, in time of war, comply with international law relevant to the protection of the environment in times of armed conflict.

69. Mr. AL-GHANIM (Kuwait) said that his delegation welcomed continued consideration of the current agenda item, particularly in view of the unprecedented environmental disaster inflicted on his country and neighbouring regions when Iraqi regime set fire to its oil wells and deliberately released millions of barrels of oil into the waters of the Gulf. While the immediate effects on water, air and soil were only too visible, the long-term effects on human life were a source of even greater concern.

(Mr. Al-Ghanim, Kuwait)

70. His delegation was in full agreement with the conclusion, stated in the report of the Secretary-General, that the search must continue for ways of protecting the natural environment in times of armed conflict. In that connection, it supported the continuation of ICRC expert consultations, including the preparation of a handbook of model guidelines for military manuals. It endorsed the main conclusions stated in paragraph 40 of the report, as well as the need to develop or clarify existing law to deal with the issues listed under paragraph 43.

71. His delegation endorsed the related principles of the Rio Declaration, on Environment and Development, particularly principle 24, and welcomed the results of the meeting of experts convened under the auspices of ICRC at Geneva in April 1992. Proper compliance with existing rules could best be ensured by the accession of the greatest possible number of States to existing treaties and use of the specific mechanisms provided for under instruments of international humanitarian law.

72. Mr. Zarif (Islamic Republic of Iran) resumed the Chair.

73. Ms. RIVERA (Costa Rica) said that the question of the protection of the environment in times of armed conflict had aroused great concern in the international community, particularly after the Gulf crisis. The world had entered a new era of international relations in which there was a conviction that, although intervention could be legitimate, wars generally brought destruction, suffering, death and misery. A change of attitude was therefore needed, and true political will, so that States would opt to solve conflicts through peaceful means and agree to sign and implement international conventions with a view to protecting human life, natural resources and the environment.

74. The international community had legal instruments to protect the environment; their legal content derived from international humanitarian law and other sources of international law. An appeal should be made to States which had not yet done so to sign or ratify those legal instruments. The work initiated by the group of experts convened under the auspices of ICRC was very important; her delegation looked forward to receiving the report of its forthcoming meeting, with conclusions and proposals.

75. It was necessary to take into account other threats to the environment, such as nuclear, chemical, biological, bacteriological and some conventional weapons. According to the United Nations Conference on Desertification, chemical and biological weapons had led to the destruction or degradation of ecosystems and desertification. For that reason, multilateral disarmament agreements must be taken into consideration, in order to protect the environment.

76. The international community should be concerned about the environment and the adoption of measures to protect it not only in times of armed conflict but

(Ms. Rivera, Costa Rica)

also in peacetime, as in the case, for example, of the dangerous maritime shipments of plutonium between the European and Asian continents, which were causing justifiable alarm among many States which could potentially be threatened by those highly toxic shipments.

77. Mr. MONTES DE OCA (Mexico) noted that there had been general agreement at the previous session to broaden the scope of the item under consideration, and the title had been changed accordingly. His delegation awaited the conclusions of the meeting of experts to be convened by ICRC in January 1993 and the preparation of a handbook of model guidelines for military manuals.

78. In the course of the debate, delegations had referred to various areas of international law which were directly related with the item under consideration. The memorandum in the annex to document A/C.6/47/3 contained broad references to legal provisions of international law referring to the protection of the environment. The representative of Sweden, speaking on behalf of the Nordic countries, had also referred to the legislation on the law of the sea, which was not mentioned in that document. It was necessary to continue the study of existing law and to bring together scattered provisions to assist the Committee's future work on the item. His delegation welcomed the mandates established by the United Nations Conference on Environment and Development and Agenda 21.

79. In the area of disarmament, his Government welcomed France's ratification of Additional Protocol I to the Treaty of Tlatelolco, and the process for the full inclusion of Argentina, Brazil and Chile in the nuclear-weapon-free zone in Latin America. It hoped that Cuba, and also Guyana and Saint Kitts and Nevis, would soon join that regime.

80. His delegation regretted that it could not go along with an invitation to ratify indiscriminately all the international instruments referred to by various speakers. It was significant that some of the sponsors of draft resolution A/C.6/47/L.2 had not yet ratified the central convention on the item: the ENMOD Convention. Various speakers had drawn attention to the shortcomings of that convention; Mexico shared the concern of the representative of Austria regarding its limited sphere of application. His Government had voted against the adoption of the Convention, at the thirty-first session, because of the authorization given to States parties in article I, paragraph 1, to engage in military or any other hostile use of environmental modification techniques as the means of destruction, damage or injury to other States parties, provided that they did not have widespread, long-term or severe effects. His delegation agreed that the concept of crimes against the environment should be developed in the context of the work of the International Law Commission concerning the draft Code of crimes against the peace and security of mankind.

81. Various delegations had referred to aspects of international judicial cooperation in connection with article 146 of the fourth Geneva Convention of

(Mr. Montes De Oca, Mexico)

1949; article 146 actually provided for the possibility of a State High Contracting Party handing a person over for trial to another High Contracting Party concerned, thereby establishing a regime of international judicial cooperation which was very similar to the extradition regime. That international cooperation should always be subject to respect for the principles of international law and the guarantees of the judicial process.

82. Mr. SEGER (Observer for Switzerland) said that Switzerland attached particular importance to respect for international humanitarian law and, in that context, to the protection of the environment in times of armed conflict. The existing international legal provisions, namely articles 35 and 55 of Additional Protocol I to the Geneva Conventions of 1949, and the ENMOD Convention provided adequate protection for the environment if they were universally applied and strictly respected. Better protection of the environment should therefore begin with the promotion of those instruments with a view to their universal acceptance. His delegation welcomed the appeal to that effect contained in draft resolution A/C.6/47/L.2.

83. Measures for an enhanced observance of existing law should also include a better dissemination of humanitarian law among the authorities and the armed forces. In addition, the relevant provisions should be analysed with a view to determining whether they still guaranteed the full protection of the environment in practice.

84. In that context, the list of provisions of international law applicable to the protection of the environment during armed conflict set out in the annex to document A/C.6/47/3 provided a very useful basis for future discussion. It should, however, be noted that the "Martens" clause, also applied to the protection of the environment.

85. The substantive work on the protection of the environment in armed conflict should be done mainly by the competent bodies established to that effect, including ICRC's expert group. That would allow for a serious, realistic and impartial approach to the problem. Any lacunae should be filled in a pragmatic and constructive manner through a gradual development of existing law, by clarifying and interpreting the relevant provisions and, if the need arose, by adding formal amendments to those rules. Switzerland would be ready to participate actively in the elaboration of new rules if they reinforced the current standard of protection of the environment. His delegation would welcome a decision by the General Assembly to follow the work being carried out in the various bodies in order to provide support.

Statements in exercise of the right of reply

86. Mr. AHMED (Iraq) said that his delegation felt frustrated because two delegations had tried to politicize the item under consideration and prevent the Committee from reaching a common understanding on environmental protection. The damage caused to the environment in the Gulf had been the

(Mr. Ahmed, Iraq)

subject of Security Council resolutions. However, the allied countries had gone beyond those resolutions, without recognizing their moral and legal responsibility for the damage they had deliberately caused to the people and environment of Iraq, in violation of the Charter and of the relevant Security Council resolutions. The allegations made by the representative of Kuwait did not merit serious consideration.

87. Mr. MORADI (Kuwait) said that he wished to reiterate the points made in his delegation's statement with regard to the Iraqi regime's devastation of oilfields and release of oil into the waters of the Gulf. His delegation had mentioned those points not to politicize the problem but simply to refer to incidents which the whole world had witnessed; the Iraqi regime's crimes had had a direct impact on the environment and on human life.

The meeting rose at 12.55 p.m.

UNITED NATIONS

General Assembly

FORTY-SEVENTH SESSION

Official Records

SIXTH COMMITTEE
10th meeting
held on
Wedensday. 7 October 1992
at 10 a.m.
New York

SUMMARY RECORD OF THE 10th MEETING

Chairman: Mr. ZARIF (Islamic Republic of Iran)

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AGENDA ITEM 127: CONSIDERATION OF EFFECTIVE MEASURES TO ENHANCE THE PROTECTION, SECURITY AND SAFETY OF DIPLOMATIC AND CONSULAR MISSIONS AND REPRESENTATIVES

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92-56863 5990S (E)

Distr. GENERAL
A/C.6/47/SR.10
12 October 1992

ORIGINAL: ENGLISH

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The meeting was called to order at 10:20 a.m.

AGENDA ITEM 127: CONSIDERATION OF EFFECTIVE MEASURES TO ENHANCE THE PROTECTION, SECURITY AND SAFETY OF DIPLOMATIC AND CONSULAR MISSIONS AND REPRESENTATIVES (A/47/325 and Add.1 and 2).

1. THE CHAIRMAN said that there was a technical error in the first sentence of paragraph 7 of the report of the Secretary-General (A/47/325); the period "1 October 1991 to 30 June 1992" should be "1 October 1991 to 13 July 1992".

2. Mr. FLEISCHHAUER (Under-Secretary-General, The Legal Counsel), introducing the report (A/47/325 and Add.1 and 2), recalled that the item under consideration had first been included in the agenda in 1980, at the request of the Nordic countries. Since then the General Assembly, in each of the relevant resolutions, had emphasized the important role of diplomatic and consular missions and representatives, as well as of missions and representatives to international intergovernmental organizations and officials of such organizations, in the maintenance of international peace and the promotion of friendly relations among States. The Assembly had also requested States to report to the Secretary-General serious violations of the protection, security and safety of diplomatic and consular missions and representatives. The reporting system had been established under General Assembly resolution 35/168 and developed in subsequent resolutions; the current system had been adopted in resolution 42/154.

3. The Secretary-General's report, which had been prepared in implemention of General Assembly resolution 45/39, consisted of three sections. Section I (Introduction) reproduced the relevant paragraphs of resolution 45/39. Section II consisted of three subsections: subsection A contained an analytical summary of the reports received; subsection B contained the text of the reports; and subsection C contained a list of reminders addressed to States which had not provided information on reported incidents, with the date of follow-up reports, if any.

4. A total of 68 new cases of violations, as well as additional information on cases previously reported, were presented in document A/47/325 for the period from 1 October 1991 to 13 July 1992. Fourteen new cases of violations reported by States were presented in the two addenda for the period from 14 July to 18 September 1992. The number of new cases was therefore considerably higher than in 1991 and 1990, when there had been 40 and 35 new cases respectively.

5. With regard to the report from Venezuela appearing in document A/47/325/Add.2, the Secretary-General had just received a report from the Libyan Government on the incident in question. It would be made available to all States in the usual manner.

(Mr. Fleischhauer)

6. Section III provided information on the state of ratification of and accessions to the relevant instruments. It should be noted that since 30 June 1992, the number of States parties to those instruments had increased. Eight more States had become parties to the Vienna Convention on Diplomatic Relations, 13 more States had become parties to the Vienna Convention on Consular Relations and 4 more States had become parties to the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents. That demonstrated that States were becoming increasingly aware of the need to strengthen respect for the principles and rules of international law governing diplomatic and consular relations so as to enable the diplomatic community to fulfil its functions, which were essential to international life.

7. Mr. FIFE (Norway), speaking on behalf of the five Nordic countries, said the item under consideration had been included in the General Assembly's agenda 12 years earlier at the request of the Nordic countries. They noted with satisfaction that the Assembly had continued to consider the item on a regular basis and that it had condemned all violations of the protection of diplomatic and consular personnel and premises.

8. In accordance with generally accepted principles and rules of international law, receiving States were under an obligation to ensure the protection of diplomatic and consular personnel and premises and of missions and representatives to international organizations. Those principles were not designed to protect particular individuals, but rather to preserve communication between States in order to maintain international peace and security. Furthermore, while the representatives of sending States were entitled to the best protective measures, they were under a strict obligation to respect the laws and regulations of the receiving States.

9. The Nordic countries again expressed their concern at the continuing violence and harassment directed against diplomatic and consular agents and premises, as described in the Secretary-General's report. They reaffirmed the need for close cooperation between sending and receiving States in order to safeguard the privileges and immunities of diplomatic and consular personnel. The Nordic countries appealed to all States which had not yet done so to become parties to the relevant international legal instruments and drew attention to the procedures for reporting violations of the protection of diplomatic and consular missions and representatives, the guidelines for which were contained in the General Assembly resolutions on the item.

10. Mr. CEDE (Austria) said the proposition that international law constituted the very foundation of the international community had its corollary in the field of diplomatic and consular relations. The orderly and safe conduct of diplomatic business could be ensured only if the rules governing such relations among States were strictly observed. In that connection, compliance by States with the relevant provisions of the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular

(Mr. Cede, Austria)

Relations was essential. The nearly universal acceptance of those two instruments showed that they were the common legal denominator for both diplomatic and consular relations. The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents complemented the two Vienna conventions.

11. That body of diplomatic and consular law was of great importance to a country like Austria, which was not only the receiving State for a number of diplomatic and consular missions, but which also hosted major international organizations. Providing adequate protection for all the diplomatic and consular missions, representatives, international organizations and their staff was an enormous task for the Austrian police. On the whole, the security situation of diplomats in Austria could be described as satisfactory; however, in 1991 there had been three incidents involving violations of the security of the diplomatic and consular missions of Turkey in Austria (A/47/325). The Austrian authorities had reacted promptly and forcefully in each case.

12. At a time when crime was increasing in various parts of the world, measures to enhance the protection, security and safety of diplomatic and consular missions and representatives deserved continued attention. It was incumbent on the Committee to monitor further developments and the response thereto by States, in terms of both domestic legislation and law enforcement.

13. Mr. GONDRA (Argentina), speaking on behalf of the countries of the Rio Group, said that although it could not be said that the protection, security and safety of diplomatic and consular missions and representatives had significantly improved since 1980, the periodic consideration of the subject was extremely valuable. Through the adoption of resolutions on the item, States renewed their commitment to protect diplomatic and consular missions and representatives and internationally protected persons. The Committee was able to assess the state of ratification of and accession to the main international conventions on the subject; and, in particular, the system of reporting by States provided a broad view of the situation and ensured adequate publicity of the violations which occurred and of the measures that were taken to bring the perpetrators to justice.

14. There was no doubt that, among the measures that States could take, accession to the Vienna Conventions was very important. However, States must also take administrative and legislative measures to fulfil the objectives of the Conventions.

15. Communication and cooperation between diplomatic and consular missions and the receiving State were important not only in strengthening links between States but also in facilitating the protection, safety and security of agents and their families, and property and premises. Practical measures should be taken to strengthen cooperation between the authorities of the receiving country and accredited representatives.

(Mr. Gondra, Argentina)

16. Breaches of the security and inviolability of representatives and missions were sometimes perpetrated by States, but most often by individuals, either common criminals or terrorists. Such actions, regardless of their perpetrator or motive, had no justification whatsoever and were serious violations not only of international law but also of the most elementary concepts of a civilized society.

17. The members of the Rio Group renewed their commitment to respect the principles and norms of international law relating to the protection and inviolability of diplomatic and consular agents and representatives and their missions; and called on other members of the international community to make a similar commitment.

18. Speaking as the representative of Argentina, he said that on 17 March 1992, a very regrettable incident had occurred in Buenos Aires, which had been duly reported to the Secretariat. As a result of a powerful explosion, the Israeli Embassy had been virtually destroyed and serious damage had been caused to nearby buildings. Many people had been killed or injured, including Israeli diplomats and many embassy personnel. The President of Argentina, and also various political leaders, had deplored the incident. His Government had established a compensation scheme for the victims, and had specifically indicated that the scheme was based, not on State responsibility or the provisions of civil law, but on special executive powers, taking into account the circumstances of the case. Investigations by the Argentine Federal Police were continuing, with the cooperation of special bodies in friendly countries.

19. Mrs. DLIMI (Tunisia) said that Tunisia strictly adhered to the norms of diplomatic and consular law and ensured the full implementation of the relevant conventions, especially in respect of the protection of diplomatic and consular missions and their representatives. That protection was not a matter of expediency but derived from respect for the principles and norms of international law.

20. Tunisia had acceded to the Vienna Convention on Consular Relations and the Vienna Convention on Diplomatic Relations in 1964 and 1968 respectively, and was also a party to the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents. In Tunisia, foreign missions and residences were guarded continuously by security agents. That protection was provided on the basis of the principle of reciprocity. The security agents wore civilian dress and used unmarked cars. Those measures were strengthened whenever problems arose or at the request of the mission concerned.

21. Tunisia had always ensured such protection because it was aware of the important role of diplomatic and consular missions in relations between States and in the consolidation of cooperation between them in all areas of

(Mrs. Dlimi, Tunisia)

international life. Encroachments on diplomatic immunity jeopardized the very essence of that cooperation and the civilized rights deriving from it.

22. Her delegation welcomed the new accessions to the relevant conventions and hoped that all members of the United Nations would act to safeguard diplomatic and consular immunities and the inviolability of diplomatic and consular missions.

23. Mr. WOOD (United Kingdom), speaking on behalf of the European Community and its member States, welcomed the work carried out by the Legal Counsel and his staff in implementing the reporting system and transmitting the reports received on a timely basis. It was understandable that there were some cases where it took States some months to respond, since a thorough investigation and follow-up to an incident inevitably took time. Nevertheless, States should be encouraged to submit interim responses pending the final outcome of an inquiry and possible prosecution.

24. The report before the Committee showed that attacks against diplomatic and consular missions and personnel had continued. A considerable number of the attacks reported had occurred in Europe, both within member States of the European Community and in other countries of Europe. As the report showed, in such cases the authorities of the member States had taken all possible steps to investigate the incidents and, where appropriate, to bring those involved to justice.

25. Many of the incidents reported involved the missions or representatives of the same States. It could not be overemphasized that whatever might be thought about the policies of a particular State, there could be no justification whatsoever for criminal attacks against its missions and representatives.

26. Two particular cases needed to be mentioned: the horrific explosion earlier in 1992 outside the Embassy of Israel in Buenos Aires in which many persons had been killed or injured; and the incident in April 1992 when the Venezuelan Embassy in Tripoli had been attacked and set on fire, following Venezuela's vote in the Security Council on resolution 748 (1992), without any action being taken by the Libyan guards or police.

27. The European Community and its member States vigorously condemn the abhorrent acts recorded in the report, which included the murder or attempted murder of diplomatic representatives. In addition to the devastating effects such acts had on the lives of individuals, they were liable to jeopardize friendly relations among States.

28. There was no lack of international instruments in the field of the protection of diplomatic and consular representatives and missions. General international law also contained principles and rules on the subject. It was to be hoped that States which had not yet become parties to the relevant

(Mr. Wood, United Kingdom)

conventions would soon do so. It was essential that existing obligations should be fully observed. Efforts should continue to be concentrated on strengthening the determination of States to abide fully by their international obligations.

29. Other violations of the obligations regarding diplomatic and consular privileges and immunities also gave cause for concern. It was essential that all States should observe scrupulously all obligations concerning the immunities, protection, security and safety of diplomatic and consular missions and representatives under general international law as well as the relevant international conventions.

30. Privileges and immunities were granted, not for the personal benefit of individuals, but in order to ensure the smooth and effective exercise of diplomatic and consular functions, for the benefit of international relations as a whole. Sending States had the right to expect that their diplomatic and consular representatives would be adequately protected and their privileges and immunities strictly observed. At the same time, abuses by missions or representatives of their privileges and immunities must be avoided. Respect for the laws of the receiving State was essential. The European Community and its member States would continue to cooperate in measures to deal with such abuses, which only served to undermine public acceptance of diplomatic privileges and immunities and, ultimately, to jeopardize the proper conduct of international relations.

31. The European Community and its member States remained strongly committed to the use of all lawful means for preventing crimes against diplomatic and consular representatives and violations of their immunities and were ready to strengthen international cooperation to that end by all possible means.

32. Mr. CASTILLO (Venezuela), referring to the attack on the Venezuelan Embassy in Tripoli (A/47/325/Add.2, para. 4), said that the President of the Security Council had made a statement on behalf of the Council (S/23772), at its 3064th meeting, on 2 April 1992, strongly condemning the violent attacks on and destruction of the premises of the Embassy and demanding that the Government of the Libyan Arab Jamahiriya take all necessary measures to ensure the security of the personnel and to protect the property of the Embassy of Venezuela in the Libyan Arab Jamahiriya, and that it pay to the Government of Venezuela immediate and full compensation for the damage caused.

33. Mr. YAGOB (Libyan Arab Jamahiriya), speaking in exercise of the right of reply and referring to the statements made by the representatives of the United Kingdom and Venezuela, said that, as the Legal Counsel had indicated in his opening remarks, the Libyan Arab Jamahiriya had already responded in connection with the matter under discussion. His delegation wished to inform the Committee that, after the adoption of Security Council resolution 748 (1992), which imposed sanctions on the Libyan Arab Jamahiriya, a group of young people had marched on several foreign embassies in protest. Despite

(Mr. Yagob, Libyan Arab Jamahiriya)

opposition from the security forces, the protesters had managed to force their way into the Venezuelan Embassy. They had eventually been expelled by the police and a heavy guard had been posted around the building. His Government expressed its sincere regrets to the Venezuelan Government and, in the hope that the incident would not affect the good relations between the two countries, was prepared to pay equitable compensation for the damage caused. Other premises had been made available to the Venezuelan Embassy and his Government had provided the Venezuelan Government with $280,000, representing two years' rent on the new premises. Further damages were being assessed by a special commission.

The meeting rose at 11.10 a.m.

UNITED NATIONS

General Assembly

FORTY-SEVENTH SESSION

Official Records

SIXTH COMMITTEE
11th meeting
held on
Thursday, 8 October 1992
at 10 a.m.
New York

SUMMARY RECORD OF THE 11th MEETING

Chairman: Mr. TOMKA (Vice-Chairman) (Czechoslovakia)

later: Mr. ZARIF (Chairman) (Islamic Republic of Iran)

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AGENDA ITEM 126: STATUS OF THE PROTOCOLS ADDITIONAL TO THE GENEVA CONVENTIONS OF 1949 AND RELATING TO THE PROTECTION OF VICTIMS OF ARMED CONFLICTS (continued)

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Distr. GENERAL
A/C.6/47/SR.11
13 October 1992

ORIGINAL: ENGLISH

In the absence of the Chairman, Mr. Tomka (Czechoslovakia), Vice-Chairman, took the Chair.

The meeting was called to order at 10.10 a.m.

AGENDA ITEM 127: CONSIDERATION OF EFFECTIVE MEASURES TO ENHANCE THE PROTECTION, SECURITY AND SAFETY OF DIPLOMATIC AND CONSULAR MISSIONS AND REPRESENTATIVES (continued) (A/47/325 and Add.1 and 2)

1. The CHAIRMAN informed the Committee that the Secretary-General had just received a follow-up report from the Permanent Representative of Germany concerning an incident which had occurred in Cologne in 1989. The report would be circulated to all States in the usual manner.

2. Mr. BAKER (Israel) said that the item under discussion, in addition to dealing with a basic tenet of international law and practice, was for every representative on the Committee for more than a theoretical or academic exercise, for it directly affected all of them. Any act planned, arranged and carried out with the aim of harming, impeding, prejudicing or rendering useless the protection, security and safety of diplomatic or consular representatives was a stark violation not only of the basic norms of human behaviour, but also of international law and practice and of the resolutions drafted by the Committee.

3. Acts of violence against diplomatic missions, in addition to causing personal tragedy, undermined the entire concept of accepted diplomatic and consular practice and functioning in the interrelationship between States. The perpetrators of such acts, as well as those who supported, encouraged, assisted and armed the perpetrators, undermined international civilized coexistence and international law and custom, as well as each and every representative to the General Assembly.

4. He drew attention to the senseless acts of terrorism which his delegation had reported to the Secretary-General (A/47/325), which had claimed the lives of Israeli diplomats, their families and staff and non-Israelis. An incident, in March 1992 at the Israeli Embassy in Buenos Aires had resulted in the death of 28 people and had injured some 300 people in and around the Embassy. The senior Israeli diplomat murdered in that tragic incident had been David Ben-Rafael, who had served as Israel's representative to the Sixth Committee at the forty-fourth session of the General Assembly.

5. Terrorism could never be justified, and every State represented in the Committee, whatever its political or geographical orientation, was obliged by its very presence during the current discussion to do everything to prevent such violations. That included, in particular, States which were in a position to influence groups or elements that advocated, supported, encouraged, approved, incited and committed such acts of terrorism.

(Mr. Baker, Israel)

6. His delegation appreciated the assurances provided by Argentina in its note verbale on the Buenos Aires bombing (A/47/325/Add.2) that its Federal Police was investigating the incident and that the case was being handled by the Argentine Supreme Court of Justice. International law in general, and the resolutions concerning the protection of diplomats initiated by the Committee over the years obliged all States, not only Host States, to do everything to ensure the protection and integrity of diplomatic and consular missions everywhere. To that end, it was in the interest of every State to ensure full respect for the resolution to be drafted by the Committee. Such respect must include all types of cooperation at the international and regional levels to foil acts of terrorism, before more diplomats and innocent people paid with their lives.

7. The CHAIRMAN, speaking on behalf of the Committee, extended condolences to all those affected by the bombing of the Israeli Embassy in Buenos Aires in March 1992.

8. Mr. AKAY (Turkey) said that terrorism was a crime against humanity and disrupted the fabric and conduct of international relations. His country, which had been a target of international terrorism for a long time, had always condemned acts of terrorism wherever and by whomever committed. It was a party to the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations and the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, and fully abided by their provisions and those of the relevant General Assembly resolutions. His country had taken all necessary measures to eliminate the problem, and acts of terrorism against a diplomatic or consular mission or its staff were more severely punished by the Turkish Penal Code than acts targeted elsewhere.

9. The fundamental conclusion which his delegation drew from the report of the Secretary-General (A/47/325 and Add.1 and 2) was that the protection provided by certain States to his country's missions and their representatives was inadequate in proportion to the magnitude of the threat they faced. His delegation urged those States to take stronger measures and enhance the level and effectiveness of their multinational cooperation. In order to combat international terrorism, all countries should refrain from selective treatment of cowardly acts which possibly derived from domestic policy considerations, harmonize their national legislation with the relevant international instruments and fulfil their obligations with determination.

10. Mr. ALI KAZI (Pakistan) said that his delegation was deeply concerned at the increasing incidents of violence against diplomatic and consular missions and representatives in different parts of the world, as highlighted in the Secretary-General's report. His delegation strongly condemned such acts of violence, as well as those against representatives of international intergovernmental organizations and their offices, whatever the motive. States must fulfil their international obligations to ensure the protection,

(Mr. Ali Kazi, Pakistan)

security and safety of diplomatic and consular missions and their representatives by strictly adhering to the relevant principles and rules of international law. Diplomatic and consular representatives could perform their functions only in an atmosphere of tranquillity and safety.

11. Under the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations and the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, receiving States were obliged to take adequate measures to guarantee the protection, safety and security of diplomatic and consular missions and representatives, and sending States were obliged to use their missions in a manner compatible with their basic purposes. Diplomatic and consular officials were under the obligation to honour the laws and regulations of receiving States and to desist from acting in a manner which might constitute interference in the internal affairs of receiving States.

12. His Government was a party to the conventions he had mentioned and had enacted appropriate legislation to punish perpetrators of terrorist acts against diplomatic and consular agents. At the international level, the faithful application of existing instruments would make it unnecessary to adopt additional measures.

13. Mr. KOLOMA (Mozambique) said that his delegation attached great importance to the agenda item under consideration. It had been distressing to learn from the report of the Secretary-General that acts of violence against diplomatic and consular missions and representatives were continuing throughout the world. The very fact that 80 such incidents had been reported during the period from 1 October 1991 to 14 August 1992 spoke for itself. His delegation, believing that security and safety were an indispensable condition for the proper performance of diplomatic and consular functions, strongly condemned all violations of diplomatic immunity, of which his country, too, had recently been a victim.

14. On 17 March 1992, Sharfudine Mohamed Khan, a member of Parliament and Ambassador Plenipotentiary to the Republic of Zambia, had been found murdered in his residence in Lusaka. The Mozambican Government regretted that, through an oversight, it had failed to report the incident to the Secretary-General in accordance with the provisions of General Assembly resolution 42/154. His delegation expressed appreciation to the Government of Zambia for its cooperation in the handling of the case.

15. Such incidents presented a challenge to the international community, since their frequent occurrence was not due to gaps in the relevant international law or to the failure by States to accede to the legal instruments in the field. Most States were parties to a range of conventions on the issue, in particular, the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations. Further international cooperation was essential, and should be complemented at the national level by

(Mr. Koloma, Mozambique)

measures to raise public awareness of the relevant legal instruments. In addition, States could also enact specific domestic legislation to enhance the protection, security and safety of diplomatic and consular missions and representatives.

16. Mrs. SINJELA (Zambia) said that she wished to assure the Committee and the representative of Mozambique that her Government was still investigating the circumstances that had led to the death of the Mozambican Ambassador in Lusaka and, as soon as the circumstances were determined and the investigation was completed, the Government of Mozambique would be informed accordingly.

17. The CHAIRMAN, speaking on behalf of the Committee, extended condolences to the family of Mr. Khan and to the Government of Mozambique.

18. Mr. D'ALMEIDA (Togo) said that his country had acceded to the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations and the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents. The alarming increase in the number of violent terrorist acts committed against diplomatic and consular representatives was amply documented in the Secretary-General's report. Such acts violated the rules of international law and seriously undermined the normal functioning of international relations.

19. The problem facing the international community lay not in the inadequacy of existing norms, but rather in the ignorance or disregard thereof. It was therefore imperative that States demonstrate the political will to meet their obligations under international law in that regard. In the light of the breakdown of ideological barriers and increasing interdependence among the world's nations, States should cooperate more fully within the framework of the United Nations to ensure the complete implementation of existing conventions and relevant norms of international law.

20. The successful application of those conventions and norms required that States adopt appropriate measures to prevent and punish the acts in question. Consideration should be given to conducting impartial international inquiries into certain cases that involved serious and deliberate violations of diplomatic law.

21. His delegation wished to underscore the usefulness of the reporting procedures established by the General Assembly whereby States informed the Secretary-General of all serious violations of the security of diplomatic and consular missions and representatives of which they had been the victims or which had occurred on their territory.

22. Mr. ORDZHONIKIDZE (Russian Federation) said that 12 years after the item under consideration had first been included in the agenda of the General Assembly, serious violations of the security of diplomatic and consular missions and representatives continued unabated, as was clearly demonstrated

(Mr. Ordzhonikidze, Russian Federation)

in the report of the Secretary-General. At the same time, the action taken by States to prevent such violations or alleviate their consequences was significant.

23. Careful consideration must be given to the further steps that could be taken to enhance the protection, security and safety of diplomatic missions, strengthen the regime of existing international agreements, and make them universal in nature, and promote the entry into force of new agreements. In cases where States themselves violated diplomatic norms and principles, the possibility of imposing sanctions against those States must be considered.

24. There was no justification for the senseless attacks on the Embassy of Israel in Buenos Aires and the Embassy of Venezuela in Tripoli. It was gratifying that the Governments concerned had taken all possible measures to resolve those incidents, including the payment of financial compensation. It was disturbing that a number of illegal actions had been carried out in connection with the adoption by the international community of decisions on the political settlement of particular conflicts. That problem required careful study.

25. His delegation welcomed the emergence of new independent States on the world arena. Those States must conduct themselves in a civilized manner and observe the principles and norms of international law, above all those relating to the protection of diplomats, in order to have authority at the international level. In that connection, he was obliged to note recent events in Afghanistan, when the evacuation from Kabul of the diplomatic staff of a number of foreign States had taken place under heavy gunfire, and had been possible only through the able and courageous actions of Russian military personnel. The military personnel had saved over 230 diplomats from various embassies, but there had been casualties.

26. One of the key factors in strengthening trust among States and expanding mutually advantageous cooperation was for the host country to ensure optimum conditions for the normal work of foreign missions and representatives at all times, even in critical situations.

27. Mr. Zarif (Islamic Republic of Iran) took the Chair.

28. Mr. NAJAFI (Islamic Republic of Iran) said that the non-violability of diplomatic and consular missions and representatives had been a generally accepted principle of international law for centuries. The obligations of States to ensure the security and safety of diplomatic and consular missions and representatives were embodied in the two Vienna Conventions on diplomatic and consular relations and the Convention on the Prevention and Punishment of Crime against Internationally Protected Persons, Including Diplomatic Agents.

(Mr. Najafi, Islamic Republic of Iran)

29. Despite the existence of those instruments, the number of violent acts against diplomatic and consular missions and personnel had sharply increased in recent years. Since the previous debate in the Committee on the item, a number of his country's diplomatic and consular missions had been attacked, in a planned and coordinated manner, by members of a terrorist organization, resulting in destruction of property and injuries to individuals; those incidents had been reported to the Secretary-General in accordance with General Assembly resolution 45/39, paragraph 9, and were reflected in document A/47/325.

30. In order to prevent the recurrence of such acts, it was essential for receiving States to take all necessary precautionary measures and to react promptly at the request of the missions concerned so as to lessen the extent of the damage caused. The creation of safety zones around diplomatic and consular missions would also serve as a deterrent.

31. His delegation believed that, so long as the security and safety of diplomatic and consular missions and representatives continued to be violated, the item should be retained on the General Assembly's agenda, and States should be urged to report such incidents to the Secretary-General.

32. Mrs. KOUPTCHINA (Belarus) said that the Republic of Belarus, as a party to the relevant international instruments, intended to continue to respect the obligations it had assumed in ensuring the protection, security and safety of diplomatic missions and representatives, and diplomatic privileges and immunities in general. That question acquired new significance for Belarus as an independent State. The number of Belarusian diplomatic and consular missions abroad was steadily growing, and also the number of missions of foreign States in Belarus. There were now 21 embassies of foreign States in Belarus, and on 8 September 1992, a UNDP office had been officially opened in Minsk. Provisions on diplomatic and consular missions of foreign States in the Republic of Belarus had been formulated, and would be adopted by her Government, specifying the international obligations that Belarus had assumed in the area of diplomatic and consular relations. Those obligations would become part of national legislation.

33. The Republic of Belarus firmly condemned the actions described in the report of the Secretary-General and endorsed the view put forward by the representative of the United Kingdom that, whatever might be thought about the policies of a particular State, there could be no justification for criminal attacks against that State's missions and representatives.

34. Belarus supported the view that the item should be included in the agenda of subsequent sessions of the General Assembly. As new States became Members of the United Nations, it was to be hoped that States which had not yet done so would become parties to the relevant international legal instruments and that States would take effective measures to strengthen the observance of their international obligations under diplomatic law.

35. Mr. MESCHERIAK (Ukraine) said that from time immemorial, international law had contained rules governing the status and activity of State representatives and missions in official inter-State relations with the aim of protecting their rights and legal interests in the process of international communication. Ukraine had always advocated strict observance of the principles and rules of diplomatic and consular law by all States, as a prerequisite for maintaining world peace and security as well as friendly relations among States. Protecting embassies and consulates, taking timely measures to suppress hostile actions against them and punishing the offenders not only constituted obligations under international law but also corresponded to States' own interests, as every sending State was at the same time a receiving State. Incidents such as those described in the report of the Secretary-General could undermine international stability and relations between sending and receiving States.

36. In order to enhance the protection, security and safety of diplomatic and consular missions and representatives, the implementation of the international legal instruments in force must be strengthened. Reporting procedures were of great significance as they attracted world attention to violations that occurred.

37. His delegation believed that the item should be included in the agenda of subsequent sessions of the General Assembly until the rules of international law were fully observed.

38. Ms. WILLSON (United States of America) said that the momentous changes that had reshaped the world since the Committee had last addressed the item under consideration gave special significance to the item. Decreasing global tensions had increased the role and importance of diplomacy, and the improved political atmosphere gave rise to the hope that incidents of violence against diplomats and diplomatic property would be effectively addressed by all States.

39. Regrettably, there had been numerous serious attacks on United States diplomatic personnel and missions in many parts of the world, as a result of which two people had been killed and seven injured, and United States diplomatic property had been seriously damaged or destroyed. Her delegation particularly condemned incidents where United States diplomatic personnel had been mistreated by officials of the receiving State. Abuse of any employee of a diplomatic establishment, including locally hired individuals singled out for persecution because of their affiliation with the mission, must be regarded as unacceptable if diplomacy or foreign aid was to continue. It was even more appalling that attacks of such a nature had been directed at international civil servants.

40. The United States continued to attach great importance to preserving the legal regime which facilitated the functioning of diplomats - a condition vital to communication among States. In response to General Assembly resolution 2819 (XXVI), the Act for Protection of Foreign Officials and Official Guests of the United States had been enacted in 1972; it established federal jurisdiction over specified violent crimes directed against officials

(Ms. Willson, United States)

and property of foreign Governments and international organizations. In order to implement the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, the Protection of Foreign Officials and Official Guests Act had been included in the United States Code; it made violence aginst a foreign official, violent attacks upon the premises of a foreign official or "attempts to commit any of the foregoing" a criminal offence. In addition, a new section of the United States Code had been added, entitled "Protection of Property of Foreign Governments and International Organizations".

41. As host to the United Nations, the United States Mission to the United Nations fully recognized its duties and responsibilities with respect to the protection of foreign diplomats in New York City. The United States had intensified its efforts to improve the protection of missions in New York City, to prevent violence and to apprehend the perpetrators of violent acts by establishing a Terrorism Task Force in May 1980. That task force had been extremely successful in reducing the incidence of terrorist acts in New York City.

42. Despite the wide ratification of treaties designed to protect diplomatic and consular missions and representatives, disturbing incidents continued to occur. Such incidents jeopardized the ability of the international community to conduct relations. States must commit themselves to implementing security measures adequately in order to deter acts of violence against diplomats and their territory and, where such acts occurred, to move immediately to prosecute or extradite the offenders. All must cooperate in bringing the perpetrators to justice.

43. The report of the Secretary-General showed an increase in reports received from States pursuant to General Assembly resolution 45/39. It was encouraging that many of the reports showed that there had been a prompt and effective response by police and local authorities, indicating that Governments took their obligation to safeguard diplomatic personnel and premises seriously. Continued implementation of the reporting regime would build a useful record over time.

44. The need for vigilance in implementing law in the area of diplomatic protection must be ongoing. Each incident had an impact on the individuals involved and had an incremental effect on diplomatic relations.

AGENDA ITEM 126: STATUS OF THE PROTOCOLS ADDITIONAL TO THE GENEVA CONVENTIONS OF 1949 AND RELATING TO THE PROTECTION OF VICTIMS OF ARMED CONFLICTS (continued) (A/47/324; A/C.6/47/L.3)

Draft resolution A/C.6/47/L.3

45. Mr. RYDBERG (Sweden), introducing the draft resolution on behalf of its sponsors, among which, in addition to those listed, were Belarus, Belgium and Spain, said that it was based on General Assembly resolution 45/38. A new

(Mr. Rydberg, Sweden)

preambular paragraph 4 had been added, noting with satisfaction that the International Fact-Finding Commission pursuant to article 90 of Additional Protocol I had become operational. Paragraph 4 had been amended so as to call upon all States which were already parties to Protocol I, as well as those States not parties, on becoming parties to Protocol I, to consider making the declaration provided for under article 90 of that Protocol. It was to be hoped that the draft resolution could be adopted without a vote.

46. Draft resolution A/C.6/47/L.3 was adopted.

47. Ms. WILLSON (United States of America), explaining her delegation's position on the draft resolution just adopted, said that in a letter to the Government of Switzerland, which exercised depositary functions in respect of the Protocols Additional to the Geneva Convention of 1949, her Government had expressed its intentions with regard to ratification of the Protocols. Although Protocol I contained some appropriate provisions, it also had fundamental defects which could not be eliminated through either reservations or interpretative declarations. Provisions such as article 1, paragraph 4, and article 44 undermined the basis of humanitarian law, endangered civilian populations and recognized as combatants groups which were not authorized to carry out the obligations imposed by Governments. A number of provisions were unacceptable from the military point of view.

48. Her Government had, however, submitted Protocol II to the United States Senate for consideration, and expected to ratify it.

49. Mr. BAKER (Israel) said that although his delegation had joined the consensus on the draft resolution, its position remained the same as in the previous debate on the item in the Committee, as reflected in the summary records of the Committee.

The meeting rose at 11.35 a.m.